



DEPARTMENT OF LAW  
OFFICE OF THE  
**Attorney General**  
STATE CAPITOL  
Phoenix, Arizona 85007

JOHN A. LASOTA, JR.  
ATTORNEY GENERAL

July 20, 1978

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**ARIZONA ATTORNEY GENERAL**

Re: 78-152 (R78-80)

Andrew L. Bettwy  
State Land Commissioner  
1624 West Adams  
Phoenix, Arizona 85007

Dear Commissioner Bettwy:

This is in response to your letter of March 24, 1978, wherein you inquired into the feasibility of arriving at a negotiated settlement in the lawsuit styled California v. Arizona, United States Supreme Court (No. 78 Orig., 1977 Term).

The actual boundary between the States of Arizona and California was established by the "Interstate Boundary Compact of Arizona and California" (1966). This Compact determined the political boundary between the states and defined the states' jurisdictional reach. It resolved the question of which parcels of land lie within the State of Arizona or the State of California. There is no longer any confusion as to the correct boundary for the enforcement and administration of the laws of the respective states.

The Compact, however, did not resolve the problem of the ownership of certain lands in the abandoned bed of the Colorado River channel, in that the political boundary does not coincide with the bed of the river owned by the respective states. There are approximately 6,000 acres of abandoned riverbed owned by the State of Arizona within the State of California. Additionally, there are approximately 3,000 acres of abandoned riverbed owned by the State of California located within the State of Arizona.

To resolve the question of ownership and to establish boundary lines, California instituted the above-referenced "quiet title" action in the United States Supreme Court. A possible negotiated settlement to this action includes the exchange of lands between the states or the sale of Arizona's interest to the State of California. In order properly to evaluate the feasibility of this settlement, you have asked the following questions:

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1. Does the State Land Department possess the power to exchange Arizona land located in California for California land located in Arizona?

2. Does the State Land Department have the power to sell land owned by Arizona located in California to the State of California?

3. If a sale is feasible, must it be conducted at public auction?

4. If the State Land Department does not have the authority either to exchange or to sell the above referenced land, what legislation is necessary to enable these transactions to occur?

The power of the State Land Department is delineated in A.R.S. § 37-102. Its powers extend to the administration of all laws relating to any lands not under the specific use and control of other state institutions and owned by, belonging to, or under the control of the State, and particularly the State trust lands received from the Federal government pursuant to the Enabling Act. The State Land Commissioner exercises and performs all the powers and duties which are vested in and imposed upon the State Land Department. A.R.S. § 37-132. The Commissioner is also a member of the Selection Board, the body which determines whether State land will be exchanged. The Selection Board is created under A.R.S. § 37-202, and its powers and duties regarding the exchange of State land are found in A.R.S. § 37-604 et seq.

In order to determine whether selected lands owned by Arizona and located within California may be exchanged for lands owned by California and located within Arizona, we must look to A.R.S. § 37-604. This statute authorizes the exchange of State lands and provides as follows:

A. The state land department and selection board, for reasons of proper management, control, protection, or public use of state lands, may exchange state lands managed by the state land department for any other land within the state. The exchange may be made for land owned or held by the United States or agency thereof, other state agencies, counties, municipalities and privately owned lands.

The statute authorizes only the exchange of land located within this State for "other" land located within

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this State. Although the land owned by Arizona located within California may be managed by the State Land Department, the land cannot be considered "within the State" for purposes of an exchange authorized by A.R.S. § 37-604.A. Accordingly, we must conclude that the contemplated exchange is not authorized by A.R.S. § 37-604.

In general, all State land under the State Land Department's control is subject to appraisal and sale as provided in A.R.S. § 37-231 et seq. However, the normal statutory sale procedures in Title 37 do not lend themselves to the sale contemplated here for several reasons. All State land sold must be sold with the reservation of oil, gas, mineral and other rights enumerated in A.R.S. § 37-231.E. For practical reasons, the contemplated sale is for a quitclaim interest, making a reservation of mineral rights, etc., unfeasible. Any application to purchase State lands must be accompanied by a full legal description of the lands sought to be purchased. A.R.S. § 37-232. The land sought to be sold has not been surveyed and, we are informed that as a practical matter, it will not be surveyed due to the prohibitive cost. Therefore, no legal description can be obtained for the purpose of sale. Additionally, the notice required for any sale of State land also contemplates a full legal description. The amount of State land sought to be sold to California is approximately 6,000 acres, all of it grazing land. A.R.S. § 37-240 limits the amount of grazing land any one person may purchase to a maximum of 640 acres.

A.R.S. § 37-249 provides that any sale made "not in accordance with law" is void. Therefore, unless the parties can somehow comply with the statutory requirements noted above, the sale would be void. It appears to us that the contemplated sale cannot be legally accomplished pursuant to the normal sale procedures provided by Title 37.

However, the sale of Arizona's land located in California could be accomplished pursuant to A.R.S. § 37-256 et seq. This legislation, enacted in 1972, was intended to provide for the sale of the east half of the dry bed of the Colorado River, which land is the subject of this quiet title action.

Certain procedures for a sale under this legislation are changed from the sale procedures earlier noted above. There can be no question but that the sale of these very lands located within California was contemplated by the Legislature in A.R.S. § 37-256 et seq. However, a sale of Arizona's rights, after proper application is made, must be to the highest bidder pursuant to public auction. A.R.S. § 37-258. This, of course, answers your third question of whether the sale must be conducted at public auction but it also presents an obstacle to the settlement that can only be overcome by legislation.

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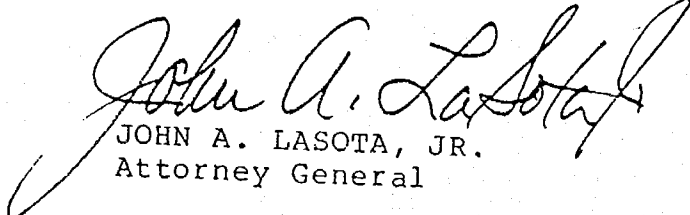
Since A.R.S. § 37-258 requires the sale of Arizona's interest in the dry riverbed to the highest bidder, we seriously doubt that California would be willing to settle this lawsuit on Arizona's promise to place the land on the auction block so California could "take its chances" of becoming the successful bidder. Although the auction is a statutory requirement, it is not imposed by the Enabling Act nor by the Constitution, because these lands are not State trust lands. As a result, the Legislature could create an exception to the public auction requirement and permit the quit-claiming of Arizona's interest in the dry riverbed to the State of California without public auction by amending A.R.S. § 37-258 to add a subsection to read as follows:

B. If the applicant under A.R.S. § 37-257 is the State of California, then upon receipt of the appraisal of the lands by the State Land Commissioner, the Commissioner shall give California the first right of refusal to purchase the land at the appraised value prior to the public bidding process enumerated in subsection A above.

By providing for this type of sale in A.R.S. § 37-258, the normal sale procedures in Title 37 for State trust lands will remain the same.

If you have any further questions or wish to enlist our assistance in enacting the suggested legislation, please contact Mr. Kolsrud or Mr. Ching of my staff.

Very truly yours,

  
JOHN A. LASOTA, JR.  
Attorney General

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